



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

October 21, 2020

VIA ELECTRONIC MAIL

Corning Painter
Chief Executive Officer
Orion Engineered Carbons, GmbH

Russell L. Webb
Vice President – Engineering

Orion Engineered Carbons LLC, Americas Region
4501 Magnolia Cove Dr., Suite 108
Kingwood, TX 77345

Dear Mr. Painter and Mr. Webb:

We have received the March 23, 2020 letter from Orion Engineered Carbons, LLC (“Defendant”), submitting a force majeure notice due to the potential impact of the novel coronavirus disease (“COVID-19”) on Defendant’s compliance with the Consent Decree, in *United States et al. v. Orion Engineered Carbons, LLC*, No. 6:17-cv-01660 (W.D. La. June 8, 2018), and subsequent updates submitted in response to our letter of April 24, 2020.¹ The U.S. Environmental Protection Agency (“EPA”) has consulted the Department of Justice. This letter serves as a reminder of Orion’s obligations under the Consent Decree and requests further information on behalf of the United States and the State of Louisiana (“Government Plaintiffs”).

The United States has not granted Defendant’s claim of force majeure with respect to installation of the SO₂ and NO_x control technologies required by the Consent Decree at its Ivanhoe, LA facility, and was surprised to read Defendant’s statement that it “*will* not begin operation until late 2021”. July 21, 2020 Letter from Providence Engineering and Environmental Group LLC to Louisiana Department of Environmental Quality Regarding Regional Haze Analysis (emphasis added). With respect to the Ivanhoe controls, Defendant has not adequately supported “the reasons for the delay or impediment, the anticipated duration of the delay or impediment, all actions taken or to be taken to prevent or minimize the delay or impediment, [and] a schedule for implementation of any measures to be taken to prevent or mitigate the delay or impediment or the effect of the delay or impediment.” CD Par. 73. Similarly, Defendant has not demonstrated that it has exercised and continues to exercise “best efforts” to fulfill its obligations under the Consent Decree. Such efforts include “using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay [...] to

¹ Defendant’s updates are dated May 21, 2020, June 19, 2020, July 17, 2020, August 14, 2020, September 11, 2020, and October 9, 2020.

the greatest extent possible.”² CD Par. 72.

While we appreciate the information Defendant has provided, it is notably lacking in several respects: (1) it does not include documentation from its contractors that would support Defendant’s claims (for example, Defendant has provided no communications from Haldor Topsoe to Defendant asserting force majeure or even suggesting that Haldor Topsoe might not meet its obligations), and (2) Defendant has not provided evidence of any efforts, much less best efforts, to cure any purported delays (for example, through solicitation of a different catalyst provider). Thus, we ask Defendant to address each of these points in its next, and each subsequent, four week update required pursuant to our letter of April 24, 2020. Specifically with respect to (1), in your March 23, 2020 letter and May 21, 2020 update, you provided a list of contractors/vendors who anticipated delays in provision of equipment and services, however, no updates or documentation from the contractors to explain the need for these delays were provided. In the next and each subsequent update please provide an update to this list with any changes and with documentation including all correspondence with these contractors/vendors explaining the need for the delay in order to support the claimed impact on your schedule.

As noted in our letter of April 24, 2020, we are first and foremost mindful of the health and safety of the public, including our staff, regulated entities, and contractors as we adjust to the evolving COVID-19 pandemic. We are cognizant of potential worker and equipment shortages or delays due to the COVID-19 pandemic, as well as travel and social distancing restrictions imposed by governments and corporations or recommended by the Centers for Disease Control and Prevention to limit the spread of COVID-19. Government Plaintiffs are also aware of the present uncertainty with respect to the likely duration of some of these restrictions. We take these important considerations into account as we continue our work to protect human health and the environment.

Nonetheless, Defendant is required to adhere to the force majeure provisions of the Consent Decree to the extent it believes any specific delays in its obligations are warranted. We believe that maintaining an open and continuing dialogue will best protect human health and the environment, minimize potential misunderstandings and facilitate timely, appropriate decision-making by Government Plaintiffs as the process of recovering from this event continues. The Government Plaintiffs’ decision to continue to defer judgment at this time is not, and should not be construed as, acceptance of any potential noncompliance with the terms of the Consent Decree.

Thank you for your attention to these matters. Please feel free to contact me or Kellie Ortega (ortega.kellie@epa.gov) to discuss any of these issues further.

Sincerely yours,

Thomas P. Carroll

Thomas P. Carroll
Acting Director
Air Enforcement Division
Office of Civil Enforcement

² “Force Majeure does not include Defendant’s financial inability to perform any obligation under this Consent Decree. Unanticipated or increased costs or expenses associated with the performance of Defendant’s obligations under this Consent Decree shall not constitute circumstances beyond Defendant’s control, nor serve as the basis for an extension of time under this Section, and shall not constitute an event of Force Majeure.” Id.

cc (via email):

David Friedland, Beveridge & Diamond, P.C.

Jason Dunn, U.S. DOJ

Katherine Abend, U.S. DOJ

Kellie Ortega, U.S. EPA

Patrick Foley, U.S. EPA

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